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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,391	07/07/2005	Michael Fink	30931/L50077	1799
4743 7590 09/01/2009 MARSHALL, GERSTEIN & BORUN LLP 233 SOUTH WACKER DRIVE 6300 SEARS TOWER CHICAGO, IL 60606-6357			EXAMINER SMITH, CHAIM A	
			ART UNIT	PAPER NUMBER
			1794	
			MAIL DATE	DELIVERY MODE
			09/01/2009 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/507,391

Applicant(s)

FINK ET AL.

Examiner

CHAIM SMITH

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-14, 16- 23, and 26-29 is/are pending in the application.
- 4a) Of the above claim(s) 18-22 and 27-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 12-14, 16, 17, 23, and 26 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 12 – 14, 16, 23, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doi USPN 4,309,585 in view of Hess DE 3,119,496 or vice versa, that is Hess in view of Doi, both further in view of Löffler WO 98/48679.
3. Claim 12 now recites that the monitoring to detect non-insertion of a cooking probe comprises detecting a value over a period of time or by forming time derivatives. Doi, discloses that said detection is being determined over time in that when a cook start switch is actuated a period of time will have elapsed prior to a warning signal being emitted.
4. Claim 23 now recites determining whether the cooking process probe is in a standby position in a retaining device or whether the cooking process probe is in a measuring position in a positioning device which positions the cooking process probe for insertion into the item being cooked. Hess does not disclose automatically monitoring to detect non insertion of said cooking process probe into the item being cooked. Doi discloses a method for conducting a cooking process in a cooking chamber of a cooking appliance using a cooking process probe which is to be inserted

into an item being cooked wherein a variable of the item being cooked (temperature) is detected. At a predetermined time (cook start) an automatic monitoring to detect non-insertion of the cooking process probe is performed and if non-insertion is detected a warning signal is emitted. Doi further discloses the purpose is to prevent erroneous operation of the cooking chamber ('585; col. 1, ln 23 – 35) making it obvious to one of ordinary skill in the art to monitor the position of the cooking process probe of Hess as disclosed by Doi for its art recognized and applicants intended purpose, which is the proper conduct of a cooking process.

5. It is further noted that Löffler is disclosing the guiding of a cooking process in which a cooking process probe (meßeinrichtung; measuring device; abstract) is inserted into an item to be cooked and various parameters are input into a control unit wherein among the parameters to be inserted would be the minimal core temperature of the item to be cooked ('679; page 9, ln 30 – 34). In a pretesting phase occurring over a period of time, once the cooking process is started the previously input parameters are checked for plausibility and if said parameters do not match those expected the cooking process will be aborted ('679; page 12, ln 24 – 30), that is, if the cooking process probe was not inserted into the item to be cooked said probe would detect a starting core temperature outside of the previously set parametric value thereby causing the cooking program to be aborted. Further, while Löffler is disclosing the use of time derivatives with respect to a cooking process if the probe was not inserted into the item to be cooked the rate of change with respect to a measured cooking parameter would progress at a rate much

greater than expected thus causing the cooking process to be terminated prior to completion making it obvious to the skilled artisan to monitor the position of said probe.

6. Regarding claim 26, Doi provides a display unit for displaying the temperature detected by a cooking process probe. Detecting whether or not the probe is being grasped could be accomplished by simply grasping the probe and observing the temperature change on the display.

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Doi USPN 4,309,585 in view of Hess DE 3,119,496 further in view of Löffler WO 98/48679, further in view of Yoshida USPN 4,350,858 for the reasons of record.

Response to Arguments

8. All of applicant's remarks filed on 05 June 2009 have been fully considered but are not found to be convincing for the reasons of record and the remarks made above.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHAIM SMITH whose telephone number is (571)270-7369. The examiner can normally be reached on Monday-Thursday 7:30-5:00.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. S./
Chaim Smith
Examiner, Art Unit 1794
28 August 2009

/Steve Weinstein/
Primary Examiner, Art Unit 1794